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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) IB Docket No. 96-261
International Settlement Rates)
(FCC-Proposed "Benchmark" Rates))

COMMENTS OF TELECOM ITALIA

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Telecom Italia, a leading provider of communications services to the public around the world, respectfully submits the following comments in response to the Commission's December 1996 Notice of Proposed Rulemaking in this important proceeding.

Shared Goals & Objectives

The fundamental goal of this proceeding is -- and, should continue to be -- to ensure that all communications customers worldwide enjoy better, faster, and more cost-effective service, plus expanded access to new communications-dependent offerings which obviously hold great potential for improving economic performance and the quality of people's lives.

Last year, the U.S. Congress enacted landmark communications regulatory reform legislation. In so doing, Congress explicitly determined that a "pro-competitive, de-regulatory national policy framework [will] accelerate rapidly private sector deployment of advanced telecommunications and information technologies and

services... ." Joint Explanatory Statement of the Committee of Conference on S. 652, the "Telecommunications Act of 1996," H. Rep. No. 104-458 at p. 113 (1996).

Throughout Europe, Latin America, Africa, and Asia, virtually every government has also determined that pro-competitive and deregulatory policies, and reliance upon private enterprise, are the most promising means of furthering the interests of communications customers. Thus, Telecom Italia and other leading public telecommunications operators have embraced this approach. To the extent that the Commission seeks to foster competition, deregulation, and private enterprise, therefore, Telecom Italia certainly shares and supports those overall goals.

Significant Reservations & Concerns

Unfortunately, our overall assessment of the pro-regulatory approach outlined in the Commission's Notice is that it will not effectively accomplish our shared interest in providing customers with better, faster, and more effective service, and expanded access to new offerings. Indeed, the pro-regulatory, unilateral approach which the Commission has suggested could have precisely opposite results.

At a minimum, the following key points should be borne fully in mind by the Commission:

:: Overcome by Events. First, the Commission's proposal essentially to regulate overseas accounting rates may well have been overcome by intervening events. This pro-regulatory proposal dates from 1991-92. It was grounded on an assumption that most overseas telecommunications operators were state-owned, state-sanctioned monopolies, and thus intervention by the United States was warranted to safeguard the interests of U.S. customers. By the end of 1997, however, a majority of the world's telecommunications networks (measured in revenues and access lines) will be privatized entities.

Privatized carriers will be subject fully to financial market checks and balances, and will function in increasingly competitive, open markets. Pursuant to European Union decisionmaking, moreover, by 1998 virtually all of Europe's communications markets will be fully open to competition, including competition by U.S.-based firms (which are already major players and competitors in Europe).

A unilateral, pro-regulatory approach by the Commission might have been understandable half a decade ago. Many of the underpinnings for such an approach, however, do not prevail today. As the courts have ruled, moreover, "A regulation perfectly reasonable and appropriate in the face of a given problem may be highly arbitrary and capricious if that problem does not exist" (City of Chicago v. FPC, 458 F.2d 731, 742 (D.C. Cir. 1972)).

:: Already Cost-Based. Second, the charges which Telecom Italia and other public telecommunications carriers assess in conjunction with the origination and termination of international calls are now and, indeed, have been cost-based. These charges are developed like any other service prices and charges. Telecom Italia and other public telecommunications carriers use standard costing and pricing methodologies which are similar to those employed by U.S.-based companies. Taken into account, for example, are direct, traffic-related costs, opportunity costs, and the value of service -- factors which, again, are reflected in the prices which U.S.-based telecommunications firms now charge.

:: Major Accounting Rate Reductions Have Occurred. Third, international accounting rates in general have been declining. Telecom Italia has reduced accounting rates some 80 percent over the past four years.

It is unclear that all, or a significant part, of these reductions have been reflected in lower prices for telephone calls to Italy, however. The available American evidence indicates that the operating margins now enjoyed by U.S. international carriers on calls to Italy range from about 60 to more than 80 percent. See P.W. MacAvoy, The Failure of Antitrust and Regulation to Establish Competition in Long-Distance Telephone Services (MIT Press, 1996) at p. 270 & Figure A4-6.

Significantly, the Commission does not propose in this proceeding to take regulatory steps which would guarantee the pass-through of any further reductions in overseas accounting rates. Indeed, the Commission has terminated virtually all of its economic regulation of U.S.-based international communications carriers and thus now lacks the means to implement any such guarantee.

:: Call-Back -- A Major Problem. Settlement payments have risen in some cases. In part, this reflects "structural factors" (related to the relative sizes of national economies, international trade patterns, and differing reliance upon telecommunications). A principal reason for increasing settlement payments by U.S.-based carriers, however, appears to be a proliferation of "call-back" and "country-direct" services, not necessarily "excessive" accounting rates.

Telecom Italia in 1995 expressed serious concerns to the FCC regarding the unregulated proliferation of call-back services. Telecom Italia documented the technical problems which U.S.-based call-back operators were creating in Italy. See Letter to FCC Chairman Reed Hundt from Telecom Italia North American Manager Ettore Riccitelli, dated March 28, 1995 (filed as an ex parte presentation in Via USA Ltd. et al. (FCC File Nos. ITC-93-031, ITC-93-050, ITC-93-054)).

Nevertheless, the FCC declined to regulate U.S.-based call-back operations. One obvious result has been an escalation in U.S. settlement payments because call-back operators's calls are considered "out-bound" calls from the United States.

:: Refiling. The heavy use of "refiling" practices also appears to be increasing the volume of U.S. "out-bound" calls. Calls between Italy and other European countries, for example, are "looped" through the United States, notwithstanding the restrictions on refiling contained in the International Telecommunication Union's (ITU) recommendations. This refiling causes an increase in U.S. international settlement payments. Thus, it may well be U.S. carriers's traffic routing practices -- and not necessarily the level of overseas accounting rates -- which are creating the out-payment concerns raised by the FCC in its Notice.

:: Market Reliance Has Worked. Accounting rates and associated traffic arrangements traditionally have been negotiated among and between carriers. This tradition of relying to the maximum extent possible on private negotiations in communications is similar to the approach followed in other international network industries. At present, for instance, agreements regarding "terminal dues" in the postal field, traffic arrangements among air carriers, and international banking transactions are generally concluded through private sector negotiations.

This reliance upon private sector negotiations in telecommunications has served customers well. It has yielded a global communications network of unparalleled quality, reliability, and efficiency. This, in turn, has facilitated exponential growth in world trade. Prices in real terms have steadily declined. International traffic flows have expanded at rates which are double to triple those seen in domestic communications markets. The growth of vast and important new enterprises including the global Internet has been fostered.

These very real achievements are not the consequence of more intensive, intrusive, or unilateral regulation of the telecommunications sector. Rather, they reflect decisions in the United States, Europe, and Asia to move toward the pro-competitive, de-regulatory communications environment identified by Congress as a cardinal U.S. policy goal. The FCC should not needlessly abandon its pro-competitive, deregulatory policies in this field.

:: WTO Impact. Important negotiations and deliberations are underway within the World Trade Organization (WTO) with a view toward further liberalizing telecommunications markets worldwide. The proposal by any one party to those proceedings to act unilaterally is a matter of serious concern. As the Commission recognizes, there is significant disagreement regarding the ability of the United States unilaterally to act on international accounting rate issues, consistent with its "most favored nation"

(MFN) and other international trade obligations. The negotiations underway in Geneva are obviously challenging. It would not be desirable for the Commission to act unilaterally and potentially delay sound resolution of these WTO proceedings.

Conclusion

The Commission faces a very real choice in this proceeding. On the one hand, the Commission can continue to rely on private sector negotiations, increasing market liberalization, competition, and other market-driven forces to ensure that all communications customers worldwide enjoy better, faster, and more cost-effective service, and expanded access to new communications-dependent offerings which hold great potential for improving economic performance and the quality of people's lives.

On the other hand, the Commission can seek to institute the pro-regulatory and intrusive approach toward international communications which is set forth in its Notice, and hope that more regulation, more proceedings, and more U.S. Government decisionmaking will somehow work.

The Commission should continue to follow its traditional de-regulatory, pro-competitive policies and rely to the maximum extent possible on communications markets to continue to work.

Reliance upon market-driven forces, of course, is not perfect. A careful and objective appraisal of the history of the telecommunications industry over the past decade, however, will demonstrate that market solutions usually, if not always, work more effectively than detailed and intrusive regulation.

In conclusion, the Commission and other telecommunications regulatory authorities worldwide should continue to monitor international communications market progress. But the Commission should not reverse policies which rely on markets and the private sector by seeking to institute the approach toward accounting rates which it has proposed.

Respectfully submitted,

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